Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

Bail Application No. 4211 of 2006

Reserved on : November 28, 2006
Pronounced on : December 01, 2006

Kamal @ Kailash Joshi .....Petitioner
! ***through*:** Mr. Sunil Kumar Bharti, Advocate

VERSUS

$ State .....Respondent
^ ***through*:** Mr. M.N. Dudeja,
Addl. Public Prosecutor

CORAM :-
***THE HON'BLE MR.JUSTICE A.K.SIKRI**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Preeti Joshi (since deceased and hereinafter referred to as such) married the petitioner on 8.6.2006 according to Hindu customary rites. This marriage could not last even for two months as, on 2.8.2006 her dead body was found from a drain/ pond at Najafgarh. Though further facts would be stated at later stage, it may be worthwhile to mention at this stage that on 30.7.2006 the deceased had come to her maternal home. On 2.8.2006, a missing report vide FIR/DD No. 34 was lodged by the parents of the deceased with P.S. Uttam Nagar stating therein that the deceased had left her

matrimonial home on 1.8.2006 informing that she was going to her friend's place but did not return thereafter. After the dead body of the deceased was found, the parents of the deceased informed the petitioner (husband) about the same. The petitioner is the resident of Village Dhilkuli, Ram Nagar, Uttaranchal. After receiving the information of his wife's death, he came to Delhi and after cremation on 3.8.2006 by the petitioner in the presence of his family members, the ashes were collected whereafter the petitioner, along with his other family members, left for his village on 4.8.2006. However, in the evening hours of 4.8.2006, FIR was got registered on the statement of Smt. Rama Devi (mother of the deceased) under Sections 304-B/498-A of the Indian Penal Code (for short, 'IPC'). On the basis of this FIR, the petitioner was arrested on 18.8.2006.

2. Two brothers of the petitioner and their wives moved applications for anticipatory bail before the Additional Sessions Judge, which were dismissed on 19.8.2006 and 22.8.2006 respectively. Thereafter, on 18.9.2006, one brother of the petitioner, named Laxmi Dutt was arrested from his residence. On 19.9.2006, another brother Jagdish Joshi and wives of Laxmi Dutt and Jagdish Joshi surrendered before the Police Officials so as to take regular bail. The regular bail applications preferred by the wives of the two brothers namely, Smt.

Reeta Joshi and Smt. Rekha Joshi, were dismissed by the learned ASJ on 23.9.2006. Feeling aggrieved by this order, they have filed Bail Appln. Nos. 3606/2006 & 3605/2006 respectively. In these bail applications, the following order was passed on 13.10.2006 granting them interim bail :-

> "It is the contention of the learned counsel for the petitioner that the petitioner is sister-in-law (Jethani) of the deceased and was living separately and away from the deceased and her husband.
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> It is pointed out by Mr. Dudeja, learned counsel for the State, that just before her death the deceased and her husband had stayed with the petitioner and there is an apprehension that some poisonous substance was given to the deceased which ultimately caused her death. He has further stated that viscera report in the case is awaited.
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> The petitioner is in judicial custody since 19.9.2006. Depending on the viscera report which may ultimately be received, it can be inferred as to whether the petitioner is at all responsible or not and, therefore, the I.O. is directed to obtain the viscera report as early as possible. CFSL, Rohini, Delhi, shall also expedite the matter and give the viscera report at the earliest.
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> The petitioner, in the meantime, is released on interim bail for a period of six weeks, subject to her furnishing personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Trial Court.
>
> List on 28.11.2006.
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> Copy of this order be sent to CFSL, Rohini, Delhi."

Thereafter, Laxmi Dutt and Jagdish Joshi, brothers of the petitioners, also moved applications for bail being Bail Appln. Nos. 3782/2006 & 3780/2006 respectively in which interim bail was given to them by this Court on 19.10.2006. The petitioner has filed this application for grant of bail on 24.9.2006. Since the other four

applications filed by his two brothers and their wives were coming up for hearing on 28.11.2006, notice in this bail application was also issued for the said date. It is, in these circumstances, all the five applications were heard on 28.11.2006.

3. In the statement of Smt. Rama Devi, mother of the deceased, on the basis of which FIR in question has been registered, she has alleged as under :-

> "Q. What do you want to tell about the incident of Preeti?
> Ans. After the marriage her husband told me that your daughter is mental take her away. Her husband had never given her the status of wife and he wants divorce. When her in-laws ill-treated her we brought to our home. At home she had told that her husband always ill treats her and demanded dowry. On 01/8/2006 Preeti had telephoned at her in-laws home and nobody picked up the phone. Thereafter in the evening Preeti, after taking my permission, went to the house of her friend and afterwards we came to know that she had died at Najafgarh.
>
> Q. Is there any demand of dowry?
> Ans. Yes, always demand was made. The husband of Preeti always ill-treated her and taunted her.
> Q. Whether Preeti was murdered or she committed suicide?
> Ans. Due to maltreatment of the in-laws and due to their demand, my daughter had committed suicide.
>
> Q. Do you want to say anything else?
> Ans. No. "

4. As is clear from the orders dated 13.10.2006, interim bail was granted to the wives of the two brothers of the petitioner, pending viscera report. At the time of arguments, learned APP for the State was candid in his submission that there was nothing against the

petitioners in the said viscera report. In fact, even as per the statement of the complainant, the allegation is that due to maltreatment of the in-laws and due to their demand for dowry, the deceased has committed suicide, though it is yet to be determined whether it is a case of suicide. However, for the purpose of present application, learned APP for the State submitted that the matter be examined on this presumption and the learned counsel for the petitioners also made his submissions on that premise.

5. Submission of learned APP was that it was a case where the deceased was forced to commit suicide within two months of her marriage. There was a clear statement of the complainant that she was compelled to take this step because of the maltreatment on the part of her in-laws and demand of dowry by them. He submitted that presumption in this case would thus arise in favour of the prosecution and in view of the provisions of Section 113-B of the Indian Evidence Act, 1872, onus was upon the accused to show otherwise. His further submission was that no girl would take such an extreme step within such a short span of her marriage unless she was tortured by her husband and in-laws, which compelled her to put an end to her life. He also submitted that it was clear from the statement of the complainant that the deceased was never given the

status of wife by her husband, who wanted to divorce her alleging that she was 'mental', which allegations were totally uncalled for as the deceased was a graduate, therefore, she could not be suffering from mental disorder.

6. Learned counsel for the petitioner, however, submitted that bail in this case should be granted to all the accused persons inasmuch as the allegations made in the statement of the complainant were afterthought and there was no substance therein. His submission was that the relationship between the deceased and her husband (petitioner herein) was normal, which would be clear from the various love letters written by the deceased to the petitioner and would also negate the allegation that her husband had never given her the status of wife. In support of this plea, learned counsel for the petitioner referred to the following circumstances :-

a) during the short tenure of their marriage, the deceased had been visiting her parents' house at Delhi frequently. She stayed in her maternal home from 17.7.2006 to 23.7.2006, but during this period no such complaint of any cruelty or demand of dowry was made;

b) the deceased had gone back to her maternal home again on 30.7.2006. During this visit also neither the deceased nor her parents had complained of any

cruelty or dowry demand;

c) in the missing report, which was lodged by the parents of the deceased, they specifically stated that the complainants had no suspicion on anybody;

d) even when body of the deceased was found on 2.8.2006, the petitioner and his family members were informed about the same by the parents of the deceased and they came to Delhi and the deceased was cremated by her husband according to their custom in the presence of the parents/relatives of the deceased. At this juncture also there was no allegation of any cruelty or demand of dowry. Not only this, after collecting the ashes of the deceased, the petitioner left for his native place on 4.8.2006 and till that time no such allegations were made. FIR was got registered only at about 1710 hrs. on 4.8.2006;

e) it is stated that according to the missing report dated 2.8.2006, the deceased had left the house at about 5.00 O'clock in the evening of 1.8.2006, whereas in the statement of the deceased's brother, which was recorded under Section 161 Cr.P.C., he states that his mother had told him on phone that the deceased had left in the morning after informing that she was going to her friend's house; and

f) in order to demonstrate that the allegations made in the FIR were afterthought, learned counsel for the

petitioner referred to various letters written by the deceased in her own hand and addressed to her husband and it was his submission that reading of these letters would show not only that the deceased and her husband enjoyed normal marital relationship, they were rather madly in love with each other.

7. It is unfortunate that Preeti Joshi died within two months of her marriage. As per the allegations contained in the FIR, she committed suicide. Section 304-B IPC was introduced by the Legislature by Amendment Act No. 43 of 1986 making dowry death as an offence. This section reads as under :-

> "**304B. Dowry death. –** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
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> *Explanation*. – For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
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> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years which may extend to imprisonment for life."

It has been held by the Supreme Court in ***Satvir Singh & Ors. v. State of Punjab & Ors,*** AIR 2001 SC 2828 that the prosecution, for an offence under Section 304-B IPC, cannot escape from the burden of proof that the harassment or cruelty was related to the

demand for dowry and this harassment was caused *'soon before her death'.* The presumption could be raised on proving the following essentials :-

(i) The question before the court must be whether the accused has committed the dowry death of a woman.

(ii) The woman was subjected to cruelty or harassment by her husband or his relatives.

(iii) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(iv) Such cruelty or harassment was soon before her death.

{See– ***Kaliyaperumal v. State of Tamil Nadu, AIR 2003 SC 3828****}*

8. Section 113-B of the Indian Evidence Act, 1872, raising presumption as to dowry death, makes the following reading :-

> "**113B – Presumption as to dowry death. –** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.
>
> *Explanation*.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code(45 of 1860)."

9. Thus, no doubt, if it is shown that Preeti Joshi died otherwise than under normal circumstances within seven years of her marriage and it is also shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her

husband, in connection with demand for dowry, such death shall be called *"dowry death"* and the petitioner shall be deemed to have caused the death. Therefore, what has to be examined is as to whether it is shown, *prima facie,* that soon before her death, she was subjected to cruelty or harassment by her husband or other relatives, i.e., the petitioners in the other bail applications. It may be stated that while examining this aspect, the entire matter has to be examined in the context of grant/non-grant of bail to the petitioners.

10. I may also state here that learned APP for the State had not seriously opposed the bail applications of the husband's two brothers and their wives, having regard to the facts of this case and further that they had already spent more than two months in judicial custody and were not required for further interrogation. He, however, opposed the bail application of the husband with all vehemence.

11. Learned counsel for the petitioners is right in his submission that in the missing report it was categorically mentioned that the complainants were not suspecting anybody. However, since the deceased left the house on 1.8.2006 while in Delhi and did not return back and at that time the complainants could not think that she would commit suicide. It was only a missing report and they

may be nurturing the belief that something wrong may have happened to the deceased in Delhi. Therefore, at that stage, the complainants would not relate the missing incident of their daughter with the petitioners. Only when it was found that the deceased had committed suicide the names of the petitioners were disclosed, who were allegedly treating the deceased with cruelty. Therefore, this argument, by itself, of the learned counsel for the petitioners would not cut much ice. However, the love letters written by the deceased to her husband immediately before her death cannot be brushed aside at this stage and need to be given their due weightage. True translations of two such letters are as under :-

> "1. Dearer than my life, my husband, I am remembering you a lot. Today is Wednesday, that means only three days are left before we meet. After reading this letter, kiss me the manner in which you gave a wonderful kiss to me before you left. Had you left even without kissing, that would have been alright. However, before leaving the way you treated me, my heart was overwhelmed and it is because of that love that I am able to cover this distance. That love has proved that you wanted to stay with me but work is also necessary.
>
> 2. Dear. Greetings to my husband Kamalji and I love you. I am writing this letter on Monday at 10.00 AM with a big kiss. I am missing you a lot. You are very nice. Please come once. Now, I am not able to live without you. You have a lot of patience and you are very good. I apologize for all my mistakes. You had not told my family members about the incident of *Kosi* and for that I am thankful to you. You telephoned me and said that you are missing me. I have taken some time in understanding you. Though not completely, I have started understanding you. Even when you are away I feel you are with me. Your memories are in

my breaths. When you say *'please'* I like it. Please kiss me immediately after reading this.

Likewise, in another letter which is very long and runs into four pages, the deceased expressed her love towards her husband in no uncertain terms and even stated that her husband was taking due care to her. This letter is also written at a time when she was away from her husband and she has expressed her gratitude for the love which her husband had exhibited. This letter further shows that even when she was away, she was missing her husband and remembering those moments when they were together and enjoyed marital life. She specifically mentioned about the love they made on 22nd, which was precious gift by her husband to her on her birthday. She has even described the act of love making and stated that she was eagerly waiting to meet him.

12. Reading of the aforesaid letters written by the deceased within two months of her marriage does not given an impression that the petitioner had not accepted her or had told her parents to take her away, which is the allegation in the FIR and has surfaced after her death. These letters also do not give an impression that there was any ill-treatment meted out to the deceased. I am conscious of the provisions of Section 304-B IPC and the presumption which the said section along with Section 113-B of the Indian Evidence Act, 1872 create in such cases. However, at the same time, when we are considering the bail application of the husband, these letters may

have some bearing. As against these letters written by the deceased, as of today, there are only statements of the parents and brother of the deceased, that too after her death. Therefore, in a case like this, when the petitioner is in judicial custody since 19.8.2006 and is not required for further interrogation, during the pendency of the trial, he should be released on bail. It is, accordingly, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial court.

13. It is made clear that the aforesaid observations would not have any bearing on the ultimate outcome of the criminal proceedings which would depend on the evidence that surfaces and the context in which these letters were written also comes on record.

14. Application stands disposed of.

(A.K. SIKRI)
JUDGE

December 01, 2006
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